

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

<p>Janice Lynette Allen, as Successor in Interest, and as Administrator of the Estate of Timothy Lionel Allen,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>The United States of America,</p> <p style="text-align: center;">Defendant.</p>	<p>CIVIL ACTION FILE NO:</p> <hr/>
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COMPLAINT

The Plaintiff, Janice Lynette Allen, as Successor in Interest and Administrator of the Estate of Timothy Lionel Allen ("Plaintiff"), through her undersigned counsel, files this Complaint against Defendant United States of America ("Defendant"), showing the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a citizen of the state of Georgia and resides in the City of Blythe.

2. Defendant operates the Charlie Norwood Veterans Affairs ("VA") hospital in Augusta, Georgia, and other VA facilities around the United States.

3. Plaintiff brings this action under the Federal Tort Claims Act, having previously submitted a claim to the Department of Veterans Affairs which was denied within six months of the institution of this lawsuit.

4. Jurisdiction and venue in this Court are proper.

GENERAL ALLEGATIONS

5. Plaintiff incorporates by reference the allegations in Paragraphs 1-4.

6. Plaintiff was, at the time of his death, a 51 year old veteran.

7. Plaintiff served honorably in the United States Army and was honorably discharged prior to the incident that is relevant to this matter.

8. On October 12, 2012, while being treated at the Charlie Norwood Medical Center in Augusta, GA, plaintiff was diagnosed with Stage 2 renal (kidney) failure.

9. This diagnosis was supported by a finding of microalbuminuria in his urine, or increased albumira, a well documented sign of early stage renal (kidney) failure.

10. On April 17, 2013, while being treated at the Charlie Norwood VA Hospital in Augusta, GA, Plaintiff was diagnosed with elevated creatinine. Another well documented sign of early stage renal (kidney) failure. and was told by staff members of the VA to avoid renal toxic medications.

11. On or about May 14, 2014, while being treated at the Charlie Norwood VA Hospital for metastatic prostate cancer, Plaintiff was prescribed the pharmaceutical "Zometa" (Zoledronic Acid).

12. Zometa "Zoledronic Acid" is a highly dangerous medication for persons with kidney problems.

13. Within a couple weeks of being prescribed Zometa and Plaintiff taking it pursuant to the prescription, Plaintiff suffered total kidney failure.

14. The Plaintiff's kidney failure was caused by his ingestion of Zometa pursuant to Defendant's prescription.

15. The Plaintiff then suffered the debilitating effects of kidney failure including extreme pain and toxicity and a lifestyle that revolved around his intense dialysis schedule.

16. The Plaintiff endured this pain and suffering until his untimely death on February 4, 2015.

CAUSE OF ACTION

Medical Malpractice-Negligence

17. Plaintiff incorporates by reference the allegations in Paragraphs 1-16.

18. The physicians, nurses, and other staff of the VA failed to exercise the standard of care and skill ordinarily used by these individuals under same or similar conditions and like surrounding circumstances as those relevant to this case in their care and treatment of patients such as plaintiff.

19. The VA breached the standard of care described in the preceding paragraph by negligently prescribing Plaintiff a pharmaceutical that is "renal toxic" and causes kidney damage after having previously diagnosed him with early stage renal failure multiple times and instructed him not to take any medications that are "renal toxic."

20. Defendant's negligence is the sole, direct, and proximate cause of Plaintiff's significant personal injuries alleged in this complaint.¹

¹ As of the filing of this complaint, Plaintiff has submitted a second SF-95 notice of claim in compliance with the ante-litem requirement to bring a second action for wrongful death. Upon the anticipated denial of that claim, Plaintiff will bring said claim before the Court.

DAMAGES

21. Plaintiff incorporates by reference the allegations in Paragraphs 1-20.

22. Plaintiff has incurred, emotional turmoil, pain, physical infirmities and injuries, and extreme suffering.

23. Plaintiff, already facing the incredible challenge of fighting cancer, received a death sentence by losing the function of his kidneys at the hands of the Defendant.

WHEREFORE, Plaintiff prays as follows:

- a) That summons and process issue and be served upon Defendant according to law;
- b) That judgment be granted in Plaintiff's favor against Defendant for damages in the amount to be determined;
- c) That Plaintiff be awarded attorney's fees and expenses incurred by the filing of this lawsuit; and
- d) Such other and further relief as the Court deems just and proper

RESPECTFULLY SUBMITTED this 14th day of September, 2015

/s/ Joe Rhodes

Joseph T. Rhodes

Ga. Bar No. 309847

Attorney for Plaintiff

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